

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

YOLANDA ANN WILBANKS

Plaintiff,

VS.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

CASE NO. 1:12-CV-01670

OPINION & ORDER
[Resolving Docs. No. [11](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On May 25, 2012, Plaintiff Yolanda Ann Wilbanks filed a complaint in the Lorain County Court of Common Pleas seeking judicial review of the Defendant Commissioner of Social Security's decision to deny her disability benefits. [Doc. [1-2](#).] On June 27, 2012, the Commissioner removed to this Court pursuant to [28 U.S.C. § 1442\(a\)\(1\)](#). [Doc. [1](#).] The matter was referred to Magistrate Judge William H. Baughman, Jr. pursuant to Local Rule 72.2. On August 29, 2012, the Commissioner filed a motion to dismiss for lack of subject matter jurisdiction pursuant to [Federal Rule of Civil Procedure 12\(b\)\(1\)](#). [Doc. [11](#).]

The Commissioner argued that [42 U.S.C. § 402\(g\)](#) provides the exclusive jurisdictional basis for judicial review of Social Security cases and requires that such suits be brought in federal district court, not state court. [Doc. [11-1](#) at 3.] The Commissioner says that because the Lorain County Court of Common Pleas lacked jurisdiction over this lawsuit at the time of filing, this Court cannot have jurisdiction after removal even if at the outset the lawsuit might properly have been brought here. [Doc. [11-1](#) at 4.] See [Minnesota v. United States](#), 305 U.S. 382, 389 (1939).

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On November 27, 2012 Magistrate Judge Baughman issued a Report and Recommendation recommending dismissal without prejudice pursuant to [Federal Rule of Civil Procedure 12\(b\)\(1\)](#). [Doc. [14](#).] He ordered the parties to file objections by December 11, 2012. Neither party did so.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). Failure to object within this time waives a party's right to appeal the district court's judgment. See [Fed. R. Civ. P. 72\(a\)](#); see also [Thomas v. Arn](#), 474 U.S. 140, 145 (1985); [United States v. Walters](#), 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the magistrate judge's report without review. See [Thomas](#), 474 U.S. at 149.

In this case, neither party has objected to the Magistrate Judge's recommendation. Moreover, having conducted its own review of the Report and Recommendation, record, and parties' briefs, the Court agrees with the recommendation of Magistrate Judge Baughman that the Court dismiss this case.

Accordingly, the Court **ADOPTS** in whole Magistrate Judge Baughman's Report and Recommendation and incorporates it fully herein by reference, and **DISMISSES** this case without prejudice.

IT IS SO ORDERED

Dated: January 3, 2013

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE